

### REMARKS

Applicant submits this preliminary amendment in response to the office action dated August 7, 2006, with amended claims and arguments and solicits continued but favorable consideration from the Examiner.

#### *Discussion of 112 Rejections*

First, in paragraph 2 of the office action, the Examiner rejected claims 51-106 under 35 U.S.C. Section 112, as failing to comply with the written description because “the system does not handle the consummation of a transaction.” In response to Applicant’s prior arguments that pointed to support for “consummating a transaction, the Examiner indicates that:

page 5 merely describes the system as recognizing the need between members of plural groups to consummate transactions. It does not describe the step of “qualifying the buyer for consummating the transaction...” as recited in claim 51. The specification describes qualifying callers for access to the system in order to make appointment, solicit proposals, respond to a proposal, or make a special offering (page 7, lines 8-14; page 32, line 30 – page 33, line 24), not to consummate a transaction.

Applicant respectfully submits that typically the entire purpose of the background section of a patent application is to describe the prior systems, their drawbacks and indicate the need that is fulfilled by the invention described in the summary and the detailed description that follow. Therefore, the Examiner’s observation that the instant application merely points out a need is incorrect, especially because the Examiner disregards the descriptions that follow later. For example, the Examiner points only to certain descriptions and disregards other descriptions. In particular, the Examiner completely disregards the support on page 6, of the specification that clearly states that the system contemplates applications including “**merchandising**” including “**purchasing**” and “**selling.**” Further, at page 6, the specification, clearly states that the “the present system is configured to direct and exchange communication traffic, for example, in the form of offers and responses, between selective members of plural groups or sub-groups, such as vendors and buyers,” **for a number of applications including “consummating transactions.”** At the end of page 6, the specification indicates that the system is described in “accordance with

**one exemplary embodiment related to wholesale merchandising.”** On page 8, the specification indicates that a video recording is stored allowing “buyers to view the item **prior to making a purchase.**” On page 34, the specification states that “if the call is simply **to report that a sale for a special offering has been consummated,**” the vendor may only need to enter an identification number. Further at the end of page 34, the specification states that “video recordings on specific merchandise may be stored at the video file server 37 for **viewing by buyers and sales may be consummated** without any visual conferences between vendors and buyers.”

Applicant respectfully submits that the Examiner is summarily dismissing description in the specification that clearly support “consummating transactions” without adequate explanation. Moreover, there is nothing in the specification that suggests that “qualifying” is merely for some applications and not for others.

In paragraph 3 of the office action, the Examiner indicates that claims 108-109 are rejected under 35 U.S.C. Section 112 as being indefinite. With respect to claim 108, the Examiner indicates that it recites “[o]ne or more central control units..comprising the steps of: at least one buyer..” The Examiner indicates that it is not clear whether claim 108 recites a method or an apparatus. Claim 108 indicates that it is a method and Applicant has amended it to recite “using” instead of “via” to clarify that it is indeed a method claim.

With respect to claim 109, which recites a “traffic control system,” the Examiner indicates that the “transmitting step is inconsistent with the claim format of system claim 109.” Applicant is uncertain why the Examiner is demanding consistency, when in fact, claim 109 is an independent claim directed to a system and not dependent on claim 108. Applicant respectfully requests the Examiner to clarify her position with respect to this claim.

The Examiner is respectfully requested to withdraw the 112 rejections of claims 51-106 and 108-109 based on the amendments and arguments set forth here.

### ***Discussion of 103 Rejections***

In paragraph 5 of the office action, claims 51-79 are rejected under 35 U.S.C. Section 103(a) as being unpatentable over Shavit et al. in view of Kaye et al. and further in view of Foster. Applicant notes that the Examiner relies on three references to make this particular

rejection. Likewise, in paragraph 6, claims 80-106 are rejected under 35 U.S.C. Section 103(a) as being unpatentable over the combination of Shavit and Kaye and further in view of Smith. Yet again, the Examiner relies on three references to make this particular rejection. In paragraph 7 of the office action, the Examiner rejects claims 107-110 under 35 U.S.C. Section 103(a) as unpatentable over Shavit in view of Dworkin and further in view of Smith (again three references). In paragraph 8 of the office action, claim 111 is rejected under 35 U.S.C. Section 103(a) as unpatentable over Dworkin in view of Smith.

In support of the obviousness rejections, the Examiner indicates that:

it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *in re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant respectfully requests the Examiner to consider the following governing criteria for obviousness indicated below and to reconsider the rejections.

#### Governing Criteria

Applicants acknowledges the Examiner's reasoning but additionally urges the following legal reasoning and case law as the bases for rejections under 35 U.S.C. Section 103. For obviousness rejections, the establishment of a *prima facie* case of obviousness requires that all the claim limitations must be taught or suggested by the prior art. MPEP § 2143.03 The establishment of a *prima facie* case of obviousness requires that the claimed combination cannot change the principle of operation of the primary reference or render the reference inoperable for its intended purpose. MPEP § 2143.03

To resolve the issue of patentability based on obviousness, the Examiner must not only look to the teaching in the asserted references that meets the claimed limitations, but must also point to the motivation in the asserted references that invites a combination in the event one reference is devoid of a particular teaching. Simply using the benefit of hindsight in combining references is improper. *In re Lee*, 277 F.3d 1338, 1342-45 (Fed. Cir. 2002); *In re Deminski*, 796

F.2d 436, 442 (Fed. Cir. 1986)). Rather, obviousness is to be determined from the vantage point of a hypothetical person having ordinary skill in the art to which the patent pertains. See 35 U.S.C. § 103(a). The legal construct also presumes that all prior art references in the field of the invention are available to this hypothetical skilled artisan. *In re Carlson*, 983 F.2d 1032, 1038, 25 USPQ 2d 1207, 1211 (Fed. Cir. 1993).

An Examiner may often find every element of a claimed invention in the prior art. "Virtually all [inventions] are combinations of old elements." *Environmental Designs, Ltd. V. Union Oil Co.*, 713 F.2d 693, 698, 218 USPQ 865, 870 (Fed.Cir. 1983); see also *Richel, Inc. v. Sunspool Corp.*, 714 F.2d 1573, 1579-80, 219 USPQ 8, 12 (Fed.Cir. 1983). If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an Examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be "an illogical and inappropriate process by which to determine patentability."

*Sensonics, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570, 38 U.S.P.Q.2d 1551, 1554 (Fed.Cir.1996). In other words, the Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed.

Applicant has amended claims 51, 80, 107, 108, 109, 110 and 111 to variously emphasize that the central unit selects vendors based on the area of interest including an indication of the price.

Favorable consideration and allowance of the claims pending here is respectfully requested.

Respectfully submitted,

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